of limitations as to torts does not apply to it. *Railway Co. v. Rosenburg,* 129 Ala., 287; *Railway Co. v. Neal,* 79 Tenn., 270. This was the decision where the goods were destroyed by fire. *Railway Co. v. Spann,* 40 So., 83 (Ala.). And where the allegations of the complaint support a contract or a tort action, if the action would be barred as a tort action, it will be treated as a contract action. *Railway Co. v. Sweet,* 63 Ark., 563.

DIVORCE—ALIMONY—DESERTION.—SUYDAM V. SUYDAM, 80 ATL., 1057 (N. J. CH.)—*Held,* if a husband be guilty of conduct amounting to a matrimonial offence that would constitute ground for a divorce or alimony his wife is justified in leaving him and the desertion thereby becomes his.

Judicial authorities, although not in entire accord with the position taken by the main case, support it by weight of numbers. *Cattison v. Cattison,* 10 Harris 275 (Pa.); *Pierce v. Pierce,* 33 Ia., 238; *Hall v. Hall,* 25 Ky. L. R., 1304; *Johnson v. Johnson,* 125 Ill., 510. Better reason, however, and some judicial opinions uphold the more liberal view that ill conduct which will justify a desertion need not be such as would have authorized a judicial separation or divorce. *Lyster v. Lyster,* 111 Mass., 327; *Naulet v. Dubois,* 6 La. An., 403; *Gillinwaters v. Gillinwaters,* 23 Mo., 60. But, in Massachusetts, although the wife is justified in leaving the marital home, as stated above, the desertion does not become that of the husband. *Pidge v. Pidge,* 44 Mass., 257. And in Indiana the conservative view is adopted that the conduct causing the spouse to leave, in order to constitute a constructive desertion, must have been such as would itself have been a ground for an absolute divorce. *Barnett v. Barnett,* 27 Ind. App., 466. If the desertion is justified by the husband's misconduct, the fact that he supports his wife during the separation is not a bar to a divorce for desertion. *Magrath v. Magrath,* 103 Mass., 577. But leaving the marital home in consequence of mere warnings to leave, quarrels, or family unpleasantness is not, however, held a sufficient ground to constitute desertion on the part of the spouse who remains. *Rathbun v. Rathbun,* 76 Mich., 462; *Gains v. Gains,* 19 S. W., 929. But forcing the other party to leave by cruelty and abuse, held, to show desertion. *Harding v. Harding,* 22 Md., 337. Or by adultery at the marital home. *Marker v. Marker,* 11 N. J. Eq., 256. Although, if husband's adultery, because of which his wife leaves him, was at a place other than his home, it is held not to constitute desertion by him. *Lake v. Lake,* 65 N. J. Eq., 544.

DIVORCE—DESERTION—REVIVAL AFTER CONDONATION.—LAFLAMME V. LAFLAMME, 96 N. E., 62 (MASS.)—*Held,* that where the husband visited his wife where she was living after having deserted him, and remained for four days, when they cohabited as man and wife, there was a complete renewal of the marriage relation, and her subsequent refusal to accompany him to his home would not avoid the effect of his condonation.

In an action for divorce the period of time required by the statute must be continuous and not interrupted by any conduct constituting condonation. *Woolfolk v. Woolfolk,* 96 Ky., 657; *Dreisler v. Dreisler,* 69 N. Y. Supp., 326; *Holmes v. Holmes,* 44 Mich., 555. Where there is such inter-

ruption, a subsequent desertion does not revive the offence, so as to add the period before to that after. *Hitchcock v. Hitchcock,* 15 App., D. C., 81; *Ex Parte Aldridge,* 1 Sw. & Tr., 88. In general, cohabitation will constitute condonation, as in the principal case. *Reed v. Reed,* 62 Ark., 611; *Phelan v. Phelan,* 135 Ill., 445; *Rogers v. Rogers,* 67 N. J. Eq., 534. But *Kennedy v. Kennedy,* 87 Ill., 250, where there was cohabitation for one night and two days, and *Danforth v. Danforth,* 88 Me., 120, where the husband visited his wife and for two or three nights occupied the same bed, hold there was no condonation. These cases seem to hold that in desertion, unlike adultery, (see *Delliber v. Delliber,* 9 Conn., 233, and *Anonymous,* 6 Mass., 147), but as in cruelty, the mere fact of sexual intercourse alone will not constitute condonation. See *Gardner v. Gardner,* 2 Gray, 434, and *Cox v. Cox,* 5 N. Y. Supp., 367. However, condonation is less readily inferred against the wife than against the husband. *Miles v. Miles,* 101 Ill. App., 406; *Horne v. Horne,* 72 N. C., 530; *Wright v. Wright,* 6 Tex., 3. But it is well settled that acts implying neither cohabitation nor intercourse, such as visits to the children or living separately in the same house, will not condone the desertion. *Rie v. Rie,* 34 Ark., 37; *Stein v. Stein,* 5 Colo., 55; *Anshutz v. Anshutz,* 16 N. J. Eq., 162.

HUSBAND AND WIFE—ACTIONS FOR SEPARATE MAINTENANCE—ALLOWANCE OF ATTORNEY'S FEES.—KIDDLE V. KIDDLE, 133 N. W., 181 (NEB.).—*Held,* that it is the settled rule in this court that in a suit by a wife for separate maintenance, or for alimony alone, the court may at any time during the pendency of the suit make an allowance to the wife of a reasonable sum as suit money, including attorney's fees, to be paid by the husband as the court may direct.

In England and in most of the United States, the allowance of suit money and counsel fees to the wife in actions for separate maintenance is treated as a common-law right, where not granted by statute. *Fitzgerald v. Fitzgerald,* 5 Eng. Ecc., 472; *Larkin v. Larkin,* 71 Cal., 330; *McGee v. McGee,* 10 Ga., 477; *Wagner v. Wagner,* 36 Minn., 239. *Contra, Kelley v. Kelley,* 161 Mass., 111; *Sanford v. Sanford,* 2 R. I., 64, and *Therkelsen v. Therkelsen,* 35 Or., 75, holds that under statute allowance is not permitted. And the weight of American authority holds, contrary to the English rule, that the attorney can not recover from the husband. 2 *Bish. on M. & D.,* Sec. 388; *Shelton v. Pendleton,* 18 Conn., 417; *Ray v. Alden,* 50 N. H., 82; *Wing v. Hurlburt,* 15 Vt., 607. *Contra, Glenn v. Hill,* 50 Ga., 94; *Ottaway v. Hamilton,* 3 C. P. D., 393. The allowance is generally granted as a matter of course, a *prima facie* case being a prerequisite. *Litowich v. Litowich,* 19 Kan., 451; *Dougherty v. Dougherty,* 8 N. J. Eq., 540; *Bardin v. Bardin,* 4 S. D., 305. But it may be denied where the wife has means, or the husband is destitute. *Brady v. Brady,* 144 Ala., 414; *Kenemer v. Kenemer,* 26 Ind., 330; *Coad v. Coad,* 40 Wis., 392. *Contra, Lumpkin v. Lumpkin,* 78 Ill., 324; *Mangels v. Mangels,* 6 Mo., App., 481; and *Rawson v. Rawson,* 37 Ill. App., 491, holds that the wife's adultery will bar her right, but the better rule is that after showing probable cause the